

Request for Tolling of Construction Permit

ION Media Jacksonville, License, Inc. (“ION”), licensee of television station WPXU-TV, Jacksonville, North Carolina (FCC Facility ID No. 37971) (the “Station”), pursuant to Section 73.3598(b) of the Commission’s rules, respectfully requests a waiver of the tolling provisions for the Station’s post-auction construction permit (“CP”) for Channel 16. See LMS File No. 0000072136. The Station is currently operating on its post-auction Channel 16 using interim facilities pursuant to FCC authorizations.¹ Based on the following unforeseen and extraordinary circumstances, the Station respectfully requests tolling of the Station’s CP.

The FCC may grant waiver for good cause shown.² A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.³ In considering a waiver, the FCC may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁴ Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.⁵ As set for below, the Station meets the Commission’s tolling restriction waiver due to rare and exceptional circumstances beyond ION’s control.

The Commission’s rules permit a single 180-day post-transition construction permit extension.⁶ Any subsequent requests for an extension of time to construct are subject to the Commission’s Tolling Rule.⁷ The Station’s original CP was set to expire on September 6, 2019, at the end of Phase 5. As set forth in the CP extension request and STA filings referenced above, the Station was unable to construct its permanent post-repack facilities by the Phase 5 deadline due to shipment delays and ongoing technical construction challenges, and instead began operating on its post-auction channel using interim facilities. As a result, the Station requested and received a six-month extension of the Station’s CP and has been operating pursuant to the current STA.

¹ CP Extension File No. 0000074583/STA File No. 0000090811

² 47 C.F.R. § 1.3.

³ Northeast Cellular Tel. Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁴ WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972); Northeast Cellular, 897 F.2d at 1166.

⁵ Northeast Cellular, 897 F.2d at 1166.

⁶ See 47 CFR §73.3700(b)(5).

⁷ See Reminder for Post-Auction Transition Requirements and Deadlines, 33 FCC Rcd 8240, 8244-8245 (2018).

The Station continues to experience significant delays due to engineering and construction issues at its leased tower site. In June 2019, the tower owner advised ION that soil analysis indicated that significant foundation modifications would be required at the site. Subsequently, the owner commissioned a second site study, which determined that, although the foundations were adequate, some of the tower's guy anchors would require major modifications. The tower owner engaged a contractor to provide a cost estimate and a proposed schedule of work. In October 2019, ION was informed that the guy anchor work should be completed by February 1, 2020.

However, on February 6, 2020, ION was informed that the tower owner's engineering contractor has not yet committed to a shipment date for the steel required for the guy anchor project. In addition, the owner cannot book a crew for the work since the materials are not on site. As a result, ION has determined that it will not be possible to obtain and schedule a tower crew to complete the installation of the Station's main antenna prior to the March 4, 2020 expiration of the Station's current Construction Permit.

ION respectfully requests that its CP be tolled since the Station is not able to operate on its permanent post-repack facilities at this time and, therefore, will not be able to cover its CP as planned with a license application on its permanent facilities. Accordingly, the Station seeks a waiver of the Commission's tolling restrictions and an extension of 180 days to construct the Station's post-repack facilities. ION respectfully submits that this request is in the public interest because it would allow the Station to continue providing broadcast service to viewers in its community while it constructs its permanent post-repack facilities. In support of this request, ION emphasizes that the Station transitioned on time by the Phase 5 completion deadline using interim facilities on its post-auction Channel 16. Therefore, grant of this request will have no cognizable impact on the Commission's overall repack transition timeline, while allowing the Station to construct its permanent facilities and continue to serve its viewers.